ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	
Local Competition Provisions	)	CC Docket No. 96-98
of the Telecommunications Act of 1996	)	
	)	

OPPOSITION OF MCI WORLDCOM, INC. TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION OF BELL ATLANTIC AND SPRINT

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EXECUTIVE SUMMARY

Bell Atlantic and Sprint have petitioned the Commission to modify certain aspects of its Third Report and Order in this proceeding. Each of the following proposed modifications would unjustifiably restrict requesting carriers' access to unbundled ILEC network elements and should be rejected.

- The Commission should reject Bell Atlantic's petition not to require incumbent local exchange carriers ("ILECs") to unbundle local switching wherever competitors are providing any service with their own local switches.

- The Commission should reject Bell Atlantic's petition not to require ILECs to provide EELs as a prerequisite to relief from switch unbundling.

- The Commission should reject Bell Atlantic's petition not to require ILECs to construct subloop interconnection points at multi-unit premises.

- The Commission should reject Bell Atlantic's petition to limit requesting carriers' access to ILEC loop information to that information made available to ILEC retail personnel.

- The Commission should reject Bell Atlantic's petition to allow requesting carriers access to an unbundled ILEC NID with their own loop facilities only where they have deployed their own NID as well.

- The Commission should reject Sprint's petition not to require ILECs to classify the calling name (CNAM) database as a call-related database that must be made available to requesting carriers as an unbundled network element.

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**OPPOSITION OF MCI WORLDCOM, INC.
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION
OF BELL ATLANTIC AND SPRINT**

By public notice published in the Federal Register on March 7, 2000, the Commission invited parties to file Oppositions to Petitions for Reconsideration and Clarification of the Third Report and Order in the above-captioned proceeding.[1] MCI WORLDCOM, Inc. ("MCI WorldCom") hereby files this Opposition to Petitions filed by Bell Atlantic and Sprint.

I. The Commission should reject Bell Atlantic's petition not to require incumbent local exchange carriers ("ILECs") to unbundle local switching wherever competitors are providing any service with their own local switches.

Bell Atlantic has petitioned the Commission not to require ILECs to unbundle local switching wherever competitors are providing any service with their own local switches.[2] In the

[1] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Released November 5, 1999 ("Third Report and Order").

[2] Bell Atlantic Petition for Reconsideration and Clarification ("Bell Atlantic Petition") at pp. 6-11.

Third Report and Order,[3] however, the Commission explains, based on record evidence, why competitive local exchange carriers ("CLECs") often require access to unbundled ILEC local switching to serve residential and small business customers even in geographic areas where they have deployed local switches to serve large business customers. The delays and uncertainty that CLECs face in the provisioning of unbundled ILEC loops when they use their own switches render them impaired in their ability to serve residential and small business customers. ILECs still are incapable of performing coordinated loop cutovers at the high volume levels needed for CLECs to serve mass markets customers.[4] In its petition, Bell Atlantic provides no empirical evidence to challenge these Commission findings. This is not surprising; these provisioning problems persist and there is no evidence that the ILECs are taking the steps needed to resolve them. Rather than providing relevant empirical analysis, Bell Atlantic simply provides a laundry list of geographic areas in which CLECs have deployed switches in its region — with no

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[3] Third Report and Order at paragraphs 267, 271, and 273.

[4] Federal agencies continue to find that ILECs are unable to provision unbundled loops accurately and in a timely fashion at the relatively small volumes needed by CLECs to serve larger business customers, no less at the much larger volumes needed by CLECs to serve mass markets (residential and small business) customers. See Evaluation of the United States Department of Justice, In re: Application of Bell Atlantic for Provision of In-region, InterLATA Services in New York, CC Docket No. 99-295 (Nov. 1, 1999), at p. 14 ("Bell Atlantic's performance in processing orders for hot cuts of unbundled loops appears to suffer from a number of deficiencies.... Because of these deficiencies, competition through this important mode of entry is seriously constrained."). See also In the Matter of Bell Atlantic's Provision of In-region, InterLATA Services in New York, Memorandum and Order, CC Docket 99-925 (December 22, 1999), paragraph 309 (The Commission viewed Bell Atlantic's hot cut performance "as a minimally acceptable showing."). See also Evaluation of the United States Department of Justice, In re: Application of SBC Communications, Inc. for Provision of In-region, InterLATA Service in Texas, CC Docket No. 00-4 (Feb. 14, 2000), at p. 36 ("SBC experienced a disturbing number of problems in processing [UNE-loop] orders as the volume of orders has increased; there is a significant risk that these problems may become even more acute as UNE-loop order continue to rise.").

demonstration that those switches could be used efficiently to offer local telecommunications services to residential and small business customers. The Commission should reject Bell Atlantic's unjustified request for reconsideration of this rule.

II. The Commission should reject Bell Atlantic's petition not to require ILECs to provide EELs as a prerequisite to relief from switch unbundling.

Bell Atlantic has petitioned the Commission not to require ILECs to provide loop-transport combinations (often referred to as enhanced extended link or EELs) as a prerequisite to relief from providing unbundled local switching to CLECs offering service to larger business customers.[5] In the Third Report and Order, however, based on record evidence, the Commission explains why CLECs would be impaired in their ability to offer local services to larger business customers, even in density zone 1 in the top 50 MSAs, without access to EELs:

> [T]he EEL allows requesting carriers to serve a customer by extending a customer's loop from the end office serving that customer to a different end office in which the competitor is already collocated. The EEL therefore allows requesting carriers to aggregate loops at fewer collocation locations and increase their efficiencies by transporting aggregated loops over efficient-high capacity facilities to their central switching locations. Thus, the cost of collocation can be diminished through the use of EEL.... [W]e find that the ability of a requesting carrier to provision EELs more quickly than collocation arrangements, without the substantial up-front costs of establishing collocation in multiple central offices, can reduce significantly the costs of self-provisioning a switch in the initial phase of an entry strategy.[6]

In its petition, Bell Atlantic does not dispute these findings. Instead, it makes three spurious arguments.

First, Bell Atlantic argues that collocation considerations should play no part in the Act's impairment test for unbundling local switching. But the Commission already rejected "the

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[5] Bell Atlantic Petition at pp. 3-6.

[6] Third Report and Order at paragraphs 288-289.

incumbents' arguments that we must look at each element in isolation to determine whether or not that element independently satisfies section 251(d)(2)."[7] As the Commission there explained:

> Such an analysis fails to reflect the manner in which carriers interconnect their networks, and ignores factors that would impair a requesting carrier's ability to actually provide service, which is the focus of section 251(d)(2)(B). Even if a particular element may be purchased outside of the incumbent LEC's network at reasonable prices, other factors, including the costs and delays associated with collocation arrangements, as well as additional costs and operational impediments associated with the manual processes used to interconnect certain network elements, may make it impossible as a practical, economic, and operational matter for a competitor to provide services in the local market quickly and on a wide-spread basis.[8]

Bell Atlantic provides no grounds to dispute the Commission's conclusion that where collocation is required for a CLEC to use an unbundled element to offer a telecommunications service, the costs and timeliness of obtaining that collocation is germane to the impairment analysis for that element. The record demonstrates that collocation imposes both substantial up-front financial costs and substantial delays on CLECs, thus impairing their ability to offer local services using their own switches even to their larger business customers. With access to EELs, both the substantial up-front costs and the delays associated with collocation are significantly reduced, and thus the CLECs' ability to offer services to larger business customers using their own switches will not be impaired.

Bell Atlantic next claims that the Commission does not have the authority to require ILECs to combine elements that are not already combined in their networks, since the Eighth Circuit struck down Rules 51.315(c)-(f). But the Commission has not required ILECs to provide EELs. It simply acknowledged the obvious, that CLECs able to use loop/transport combinations

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[7] Third Report and Order at paragraph 63.

[8] Third Report and Order at paragraph 63.

have different needs for switching than CLECs who are not able to use these combinations. ILECs need not provide EELS, but if they choose not to do so, in certain situations CLECs would be impaired without access to unbundled local switching. This is not a requirement that ILECs provide EELS, and does not violate any rule restricting the use of combinations.

In any event, even if the Commission had required ILECs to provide EELs, that would not have violated the Eighth Circuit's mandate. A ruling that ILECs must provide EELS would have been entirely consistent with the Commission's understanding of section 251(c)(3) that was codified in Rule 51.315(b), a rule that was upheld by the United States Supreme Court. As the Commission found in its Local Competition First Report and Order,[9] and reiterated in the Third Report and Order,[10] the proper reading of "currently combines" in rule 51.315(b) is "ordinarily combined within the network, in the manner which they are typically combined." The Commission further noted that:

> incumbent LECs routinely combine loop and transport elements for themselves. For example, incumbent LECs routinely provide combinations of loop and transport elements for themselves in order to: (1) deliver data traffic to their own packet switches; (2) provide private line services; and (3) provide foreign exchange service."[11]

Thus, the Commission does have the authority to require loop-transport combinations, though it has not chosen to exercise that authority here.

Finally, in this regard, Bell Atlantic argues that requiring ILECs to provide EELs as a

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[9] In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, released August 8, 1996 ("First Report and Order"), at paragraph 296.

[10] Third Report and Order at paragraph 479.

[11] Third Report and Order at paragraph 481.

condition to switch unbundling relief is unsound from a policy perspective because it will undermine the investment competing carriers already have made in their own network facilities. This claim does not withstand scrutiny. Competitive access providers ("CAPs") and CLECs have deployed local transport facilities in those few routes that support DS3 and higher service and, not surprisingly, competition on these routes has driven rates down toward total element long run incremental cost ("TELRIC") levels. Thus, neither CAPs nor CLECs will be deterred in their DS3 investment decisions if EELs are made available at TELRIC rates. On the other hand, the underlying economics does not support CAP or CLEC investment in the DS1 transport level, and the routes that can only support DS1 levels of traffic are exactly the ones where with the lack of competition rates far exceed economic costs. In these situations, CAPs and CLECs will not invest in transport unless they can capture a large enough share of the market to support DS3s. The only way to do this is to allow CAPs and CLECs to use EELs and to slowly expand their own facilities as their market share grows large enough to support the deployment of DS3s. Moreover, CLECs always have a strong incentive to avoid use of ILEC facilities where it makes economic sense to do so. No firm wants to depend on its primary competitor if it has an economic alternative. CLECs will not build their own facilities where it would be inefficient for them to do so, and the Commission should not be encouraging or expecting inefficient investment by CLECs.

In all, Bell Atlantic provides no empirical, legal, or public policy justification for the Commission not to require ILECs to provide EELs as a prerequisite for not providing unbundled local switching to CLECs. Its request for reconsideration should be denied.

III. The Commission should reject Bell Atlantic's petition not to require ILECs to construct subloop interconnection points at multi-unit premises.

Bell Atlantic has petitioned the Commission not to require ILECs to construct subloop interconnection points at multi-unit premises.[12] Bell Atlantic argues that the 1996 Act requires ILECs to unbundle only their existing network, not to construct network elements simply to make them available on an unbundled basis to competing carriers. It claims that the Commission's requirement that ILECs construct a single point of interconnection is a requirement to construct subloop network elements. "Absent the incumbent's construction of a single point of interconnection — an "accessible terminal" — no subloop network element would exist."[13] The Commission should reject this argument as a specious attempt to deny requesting carriers access to unbundled subloops.

Sections 251(a)(1) and 251(c)(2) of the 1996 Act require ILECs to allow requesting telecommunications carriers to interconnect with their networks at any technically feasible point, and Section 251(c)(3) requires ILECs to make unbundled network elements available to requesting telecommunications carriers. Interconnection for access to the ILEC network either to originate and terminate calls or to utilize unbundled ILEC elements inherently requires some work activities — and sometimes the construction of facilities to achieve the interconnection — on the part of both the requesting carrier and the ILEC. In the First Report and Order, the Commission made clear that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent ILEC facilities to the extent necessary to accommodate

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[12] Bell Atlantic Petition at pp. 13-15.

[13] Bell Atlantic Petition at p. 14.

interconnection or access to network elements."[14] The Eighth Circuit expressly "endorsed" this statement,[15] and that endorsement was not challenged at the Supreme Court. This construction, for which the ILEC would be compensated by the requesting carrier, does not represent the creation of subloop elements where they do not exist, as Bell Atlantic alleges. Rather, it simply represents the activity needed for implementation of the interconnection and unbundling mandated by the Act.

Bell Atlantic's petition therefore should be rejected.

IV. The Commission should reject Bell Atlantic's petition to limit requesting carriers' access to ILEC loop information to that information made available to ILEC retail personnel.

Bell Atlantic has petitioned the Commission to limit requesting carriers' access to ILEC loop information available to the ILEC,[16] ostensibly to deny those carriers access that is superior to that enjoyed by the ILEC's retail personnel. Bell Atlantic would distinguish between ILEC back office personnel and ILEC retail employees and limit requesting carriers' access to loop information to the level enjoyed by the ILEC retail personnel, as if the access to the data by back office personnel does not help the ILEC in its overall marketing strategies as well as in responding to specific customer needs.

The Bell Atlantic proposal allows Bell Atlantic's marketing decisions to dictate the contents of the Loop Qualification Database. If Bell Atlantic is only marketing ADSL, for example, its database for its retail personnel will only include the information needed by its retail

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[14] First Report and Order at paragraph 198.

[15] Iowa Utilities Board v. FCC, 120 F. 3d 753, 812 (8th Cir. 1998).

[16] Bell Atlantic Petition at pp. 15-17.

personnel to support ADSL,[17] even though the back office personnel will have additional line information that would be useful to requesting carriers intending to offer services other than ADSL. If Bell Atlantic decides to market an additional product other than ADSL, only at that time will the Bell Atlantic database be expanded to support that new service. Such a regime both assures the ILEC the "first mover" advantage and keeps competitors from using leased ILEC elements to offer different products than those offered by the ILEC. It is anticonsumer and anticompetitive.

The Texas Public Utility Commission already rejected just such a proposal. In constructing an automated database accessible to its service representatives, SBC selectively pulled from the underlying LFACS and LEAD databases available to its back office personnel only that information that fit its ADSL business plan. SBC then declared that requesting carriers too would have access only to this limited loop information, regardless of their business needs. Fortunately, the Texas Commission intervened, determining that rejecting carriers need and must get access to the information that is available to the back office personnel.[18]

The Commission should reject the Bell Atlantic proposal and instead reiterate that requesting carriers must have access to all loop information available to ILEC back office

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[17] It appears that through the collaborative process in New York, Bell Atlantic will be required to provide some additional information, but that additional information will be provided only as a result of regulatory intervention.

[18] Petition of Accelerated Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20226; Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 20272, Revised Order Approving Interconnection Agreements (February 9, 2000) at pp. 2, 8.

personnel.[19]

V. The Commission should reject Bell Atlantic's petition to allow requesting carriers access to an unbundled ILEC NID with their own loop facilities only where they have deployed their own NID as well.

Bell Atlantic has petitioned the Commission to allow requesting carriers access to an unbundled ILEC NID with their own loop facilities only where they have deployed their own NID as well.[20] Bell Atlantic does not challenge the Commission's determination, based on record evidence submitted by CLECs of all sizes,[21] that:

> ... requesting carriers' ability to provide service to their customers would be materially diminished if they had to self provision NIDs because of the significant labor and construction costs involved in visiting the premises of each customer and installing the device.[22]

Rather, Bell Atlantic claims that the Commission has never made a determination that it is technically feasible for a CLEC to connect its loops directly to an ILEC NID, as opposed to connecting its loops to its own NID and then connecting its NID to the ILEC NID. It points to

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[19] To defend delays in the provision of loop information to CLECs, Bell Atlantic refers to a Commission decision about access to proprietary rights of way information made in BellSouth's second long distance application for Louisiana to access to data on ILEC loop information. The Louisiana determination involved information contained in plats, maps, and other documents that could be abused to harm either a major customer or the ILEC by exposing the exact routes of major cables to someone who might want to damage the cable or disrupt the service. The Commission ruled that such data must be redacted from the records, and that allowing five days for that redaction is not harmful because the rights-of-way process by its very nature is very time consuming. Typically it takes at least six months to complete the rights of way process. That ruling has no application here, where, by contrast, the information in the loop database is not proprietary and the CLEC need for loop information is highly time sensitive.

[20] Bell Atlantic Petition at pp. 11-13.

[21] Third Report and Order at paragraphs 237-240 and footnotes 463 and 464.

[22] Third Report and Order at paragraph 238.

the fact that in the First Report and Order the Commission found the record was insufficient to reach a determination on the technical feasibility of the direct connection of a competitor's loops to the ILEC's NID,[23] leaving it to the states to make such a determination.[24] By contrast, in the Third Report and Order, the Commission requires an "incumbent LEC [to] permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device."[25] Bell Atlantic argues that the Commission did not make a finding of technical feasibility in the Third Report and Order and therefore cannot require ILECs to allow requesting carriers to connect their loops directly to the ILEC NIDS. Bell Atlantic makes no attempt to demonstrate the conditions, if any, under which it would not be technically feasible for a CLEC to connect its loops directly to an ILEC NID.[26]

The Commission had every right to review conflicting evidence on this question and conclude that the access it required was technically feasible. The issue, very simply, is how to protect the ILEC network from overvoltage, which could occur if some outside plant is not grounded. In particular, when an ILEC loses a customer to a CLEC that self-provides the loop, it will not have the incentive to remove its loop, in case it wins the customer back at a later date. Thus there will be a need to ground both the ILEC loop and the CLEC loop. The existing ILEC

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[23] In the First Report and Order, at paragraph 395, the Commission indicated that it could not resolve the conflicting information provided by MCI and AT&T, arguing that it is technically feasible for CLECs to connect their loops to ILEC NIDS, and by Ameritech, arguing that it is not technically feasible to do so.

[24] First Report and Order at paragraph 396.

[25] Rule 51.319(b).

[26] Ameritech, the only party that has questioned such technical feasibility in this docket, did not file a petition for reconsideration of this issue.

NID cannot be used to ground both the ILEC loop and the CLEC loop if there are no spare terminals on that NID.

But it would be rare indeed for a CLEC to deploy copper rather than fiber loops. For fiber loop, grounding will be performed in the terminating box, so the CLEC loop will not have to be grounded at the ILEC NID. Thus, there is no threat to the ILEC network if the CLEC connects fiber loops directly to the ILEC NID. Thus, in practice, grounding will rarely be a problem. In the rare instance where a CLEC deploys a copper loop and there are no spare terminals on the ILEC NID, a simple rule that is far less restrictive than the Bell Atlantic proposal would fully meet ILEC concerns. The CLEC simply should be required to ground the ILEC's unused loops and its own loops to protect against overvoltage. The CLEC will have to deploy its own NID or find some other means for grounding the ILEC and CLEC loops. Thus, the overvoltage problem can be easily resolved without requiring CLECs to provide their own NIDS in every situation. The Bell Atlantic petition therefore should be rejected.

VI. The Commission should reject Sprint's petition not to require ILECs to classify the calling name (CNAM) database as a call-related database that must be made available to requesting carriers as an unbundled network element.

Sprint has petitioned the Commission not to classify the calling name (CNAM) database as a call-related database that must be made available to requesting carriers as an unbundled network element.[27] Sprint wrongly claims that the Commission's findings as to the impairment that would be suffered if CNAM were unavailable as a UNE are internally contradictory. In paragraph 415 the Commission found that the costs of self-provision would not materially diminish a carrier's ability to provide service. But in paragraph 416 the Commission found that in some cases access

[27] Sprint Corporation Petition for Reconsideration and Clarification at pp. 16-17.

to ILEC databases is the only practical way to ensure proper call flow because ILECs are the only providers of CNAM database information on the customers of both requesting carriers and ILECs. "Therefore, in order for a switch-based competitor to provide caller ID to its customers, it must have access to the ILEC's CNAM database. Such access is critical, especially because a majority of calls to a competitor's customers originate from the incumbent."[28]

CLECs need access to the CNAM database — bulk access with nightly updates — as a UNE. For MCI WorldCom or another carrier to provide a complete, accurate, and competitive enhanced caller ID product to its customers, it must have access to the up-to-date name and locality customer information collected by ILECs in the normal course of business. No other party can continually collect and update those data as efficiently or accurately.

It is true that there are third party providers of CNAM data. However, they offer an inferior product when compared to that of the ILECs. These alternative providers use data from a variety of sources, none of which is as accurate as that of the ILEC. Without unbundled access the caller ID product would suffer from incomplete coverage, inconsistent displays, and inferior service. Moreover, access to the bulk listings and nightly updates, not jut to individual database dips, is needed for CLECs to develop their own innovative new product offerings. Lack of unbundled access will materially impair CLECs' ability to offer caller ID products on a competitive basis.

The Commission got it right in its Order and should reject Sprint's petition.

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[28] Third Report and Order at paragraph 416.

Respectfully submitted,
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March 22, 2000

CERTIFICATE OF SERVICE

I, Mark D. Schneider, hereby certify that I have this 22nd day of March, 2000 caused a true copy of Opposition of MCI WorldCom, Inc. to Petitions for Reconsideration and Clarification of Bell Atlantic and Sprint to be served on the parties listed below via first class mail postage pre-paid:

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